Securities and Exchange Commission Historical Society
Interview with Meredith Cross
Conducted on June 27, 2013, by Robert Colby

RC: This is an interview for the SEC Historical Society's virtual museum and archive of the history of financial regulation with Meredith Cross. I'm Robert Colby. Today is June 27th, and today's interview is taking place at the Washington, D.C. offices of WilmerHale. Ms. Cross, thank you for being with us today.

MC: It's great to be here. Thank you.

RC: I usually start off asking about early life and education, so where are you from originally?

MC: I'm from Los Angeles, California, and I grew up all around the country. We moved constantly, so I went to four high schools and eventually graduated from high school back out in California. But when I was applying to college, we lived here in Washington, and that's how I ended up at Duke for college.

RC: And did you have any interest in law growing up?

MC: No. I had no interest in law growing up at all. I thought I wanted to be a journalist, and when I was in college I majored in political science. When I was in high school I had a lot of jobs on Capitol Hill, including as a page and an intern for a few different members of Congress and was interested in those issues and I thought I wanted to be a political reporter with a sort of law focus. That was my general idea as an eighteen-year-old going off to college. And then when I was in college I didn't know what I wanted to do, and at the time it was a very popular thing to go to law school if you did not know what you wanted to do and so I went to law school.

RC: In law school were there particular courses or mentors that shaped your career direction?

MC: At Vanderbilt, where I went to law school, my favorite classes were actually constitutional law and criminal law, and it was very much driven by the professor that you had. The reason I ended up with an interest in securities and corporate law was because in my second-year summer, where I was at King & Spalding in Atlanta, I rotated around through the firm doing anything except litigation because I knew I did not want to litigate. And in my rotation through what they called their securities department, which was the department that counseled public companies on securities law compliance and also did capital markets work, I loved that rotation. I did a review of a 10-K for a company in the business products field and figured out how to find Reg S-K and Reg S-X and learn about a business and see how the rules applied. And so I loved that work and I thought, well I'd like to do this kind of work. So, when I went back to finish law school, I concentrated on getting all the securities and corporate finance classes I could get.

RC: And then coming out you started by clerking?

MC: I did. I clerked for Judge Albert Henderson on the 11th Circuit, and this was an interesting time, it was right after the former 5th Circuit split into the 5th and the 11th and so we were learning how to apply former 5th Circuit precedent, the very complicated set of rules for how to do that, and it was a great experience. I learned certainly how important it is to be able to write well, and I also learned that I did not want to be a criminal defense lawyer because they didn't seem to do very well on appeal. But otherwise, it was just something fun to do before I went to start my real job.

RC: Which was back to King & Spalding?

MC: I went back to King & Spalding and into the securities department and I was actually the first woman they hired into their securities department.

RC: Really?

MC: Yeah. It was a long time ago. And so I started out in there doing both corporate securities law compliance work for public companies they represented, and they continue to represent a lot of really large companies, and then I also did a lot of underwriters' counsel work for IPOs. It was a boom IPO time, and so I worked as underwriters' counsel for a variety of different New York underwriters plus an underwriting firm down there called Robinson Humphrey that eventually was bought by American Express. I did a lot of underwriters' counsel work and had a great, varied corporate practice concentrated in securities down there.

RC: So from there, what brought you to the SEC?

MC: It was interesting. My husband was a tax lawyer at a firm in Atlanta, Smith, Gambrell & Russell, and the two of us decided that we wanted—two reasons really. We wanted to raise our son in Washington. We thought that would be a great place. By that point we had a two-year-old and we wanted to raise him in Washington, and we both thought that government experience would be both fun and good for our careers. And so I, through a friend of a friend of a friend, got my resume over to Linda Quinn in Corp Fin and was applying for whatever jobs they had available at the time, and he went and worked at the IRS. And so we moved up to Washington to do that.

RC: Did you have any experience with the SEC before that?

MC: Only as a person trying to get them to accept my responses to their comments on filings, or seeking no-action letters from the chief counsel's office in Corp Fin. It was interesting. When I interviewed to be an attorney fellow in Corp Fin—at the time they sent you around to any other divisions that wanted to talk to you—and so I ended up talking to enforcement and investment management and general counsel's office. And I didn't really know what any of those groups did, because, from a regular corporate lawyer's perspective and the work I did in Atlanta, that wasn't something you saw much of. And having talked to the great people, and lifelong friends actually, that I met through those couple of days of interviews, I ended up knowing I definitely wanted to be in Corp Fin.

RC: And so you started out as an attorney fellow?

MC: Right. And in the division at the time, Linda Quinn was the director and Elisse Walter was the deputy director, and Bill Morley was the associate director/chief counsel, and Abbie Arms was the deputy chief counsel. And Linda had just hired three attorney fellows into the international office, Paul Dudek and Sandra Kinsey and one other, and everybody thought that they were done hiring attorney fellows, and so when Linda decided that I was going to be hired… People there get a little bit concerned when too many people come in from the outside all at once, so I came in as an attorney fellow where you're coming in in the position of a pretty senior lawyer into the chief counsel's office. And so that's how I got placed into the division.

RC: Can you tell me about the role of an attorney fellow?

MC: An attorney fellow does the same things that the special counsels and senior special counsels do. So I reported, as I said, to Abbie Arms, who's one of my dearest friends. We've worked together forever and stayed friends forever. You get slotted in to do the same work as everyone else in the office, so in the chief counsel's office at that time one of the big jobs was doing telephone. There's a recording, people leave their questions, and then you call back and answer all these technical questions.

One of the funnier parts about that for me was that I started calling people back to answer their questions, and I knew the answers that I would give but I didn't know if they were the SEC's answers. And so I would have to take down all the questions and go back and write down what I thought the answers were and then talk to people in the office to make sure they agreed that I was right, that those answers were okay.

And then also in that job you answer questions for the people in disclosure operations who are reviewing filings, so people would come and ask if something in a filing was appropriate under the '33 Act or '34 Act rules, and so I answered questions for people. And then I worked on a lot of different rules, and the first assignment I got that was a big rule-making project when I first got to Corp Fin was a very controversial topic about which I knew nothing, which was limited partnership rollups. I got put on the team to address what to do about rollups. Lots of retail investors had lost a lot of money in limited partnership rollups. And so I spent a good long while working on the rollup project and eventually writing the rollup rules that we proposed and that were adopted, and then dealing with Congress because Congress decided they were nonetheless going to adopt statutory provisions telling the SEC to write rules that were basically the rules we already wrote, and so we had to then go back. And so I had to deal with the congressional staff on that and then fix our rules yet again.

I spent a long time on limited partnership rollups, and I also had to learn about asset-backed securities, which I didn't know anything about. With Abbie, we did the ABS shelf rules in the early nineties. That was while I was still an attorney fellow. And then we did the universal shelf rules also in the early nineties, so that was all around that time period. So most of my time was spent on things that were on the capital markets side, the '33 Act side, much more so than on, say, the comp and government side which I worked on more my second tour there.

So that was the attorney fellow time. After that I was getting ready to expire. The attorney fellows are only two years, and we used to joke I was going to put a sign outside my office that said “best if used before,” because I was going to expire. One fun piece of history I should give you is, as I was coming to the SEC as an attorney fellow—this is something Elisse talked about at my going-away party—she had to call me to cancel my job, because the budget got frozen and there was no money. My husband was up here looking for a house, and that was before we had cell phones so I actually couldn't call him or anything. And she called me to cancel my job, so I like to say that I got fired before I even started my very first time. But luckily, the job opened back up and I was able to get into it.

But in light of that, I was pretty nervous as my fellowship was getting ready to expire, and other people in the Commission were putting out feelers: would I be willing to move to a different division? So I went in and talked to Elisse and said is there going to be a job for me, what's going to happen to me, because I need a job, or go to another division. And they came up with a deputy chief counsel job.

And I had that job just for a few months. Maybe three to six months, something like that, a very brief period. And at that time Abbie was chief counsel by then and she was in Hungary helping them set up a securities regulatory system. And so when I was deputy chief counsel, I was basically doing the chief counsel job because she was out of the country, and so I did that. And then I became the chief counsel shortly after that. I think I was the chief counsel for about two years, running the chief counsel's office and figuring out what we should do with the various interpretive positions and the usual work of the chief counsel's office in Corp Fin.

RC: And that's things like answering no-action, writing no-action letters, and—

MC: Yeah, responding to no-action letter requests, the same work that the staff does in the office, overseeing the work of the office to make sure that our answers are consistent with precedent unless we want to be changing the positions. And then also, at that time and to this day, the rule-writing projects get handed out kind of all over the division, and so we had rule-writing projects going on throughout that time period. I have to say I don't recall exactly which ones we had when I was chief counsel. It's a very busy time. I used to take home stacks and stacks of no-action letters to do after my son went to sleep, where I would put them all over the kitchen table and work on them until all hours of the night. That was before you had computers at home so you had to bring all the paper home. So I spent a long time working on no-action letters and things like that when I was chief counsel.

RC: Were there issues that you felt that you commonly had to address in these no-action letters or releases?

MC: Releases, even if they're interpretive releases, would be more division-wide and senior management, and the Commission. One area that was percolating up and eventually became very significant but was becoming significant during that time period was the beginning of the Internet and what do you do, for example for a private placement. Can you have something that's private and not general solicitation be up on your web? What happens if you want to have an offering that you somehow know that can get across electronically, how can disclosures be made electronically? By then there was EDGAR, and it was around that time that EDGAR was being made mandatory for everyone so there was a sense that there was a great opportunity to unlock, but also very difficult to make the '33 Act work in the setting of a form of communication that didn't exist in 1933.

So we were beginning to get questions from people about, can we do this or that in an offering online, and wanting to be progressive but not knowing what impact that might have on investors. And of course you couldn't tell in the mid-nineties what this was all going to look like. There was no way to know. And so we didn't want to be sticks in the mud, but we also didn't want to get all caught up in the excitement of something new and cool like the phrase “plastics” in the movie *The Graduate*. We didn't want to be those people. We wanted to be thoughtful about it.

I'd say those were the areas that were percolating up where we knew it was going to be very challenging to figure out what to do.

RC: Was there anybody at the Commission who was looking at it holistically, more like what they'd done with EDGAR, or was sort of just a general…

MC: We ended up having groups from all the different divisions that would work together on issues that came up. There were various kinds of trading platforms being made available so we would need to work with TM, or how do you talk about general solicitation in the setting of a hedge fund that's continuously offered, so we would talk to IM. And eventually, we did an interpretive release in Corp Fin that we did in consultation with IM about the '33 Act and online communications, and then TM did one. So, of all the things that changed the most when I was there, it was the fact that technology was sort of overtaking a very, very old, somewhat clunky statute that did what it did brilliantly for many years but then wasn't all that well-suited. At that time, there was no exemptive authority under the '33 Act—that came in NSMIA in '96. And so there was no ability in the mid-'90s to exempt any of these things from the '33 Act. You had to interpret them to be okay.

RC: So exemptive authority, how would you use that?

MC: The SEC couldn't write a rule that said, "This can be done and you don't have to comply with registration." There was no authority under the '33 Act to do that. The SEC could not do that. So you could write exemptions under the '34 Act, you could write exemptions under the '40 Act, but for the '33 Act all the SEC could do would be to say this doesn't violate it because it's not an offer. You could define things away.

RC: You tended to work around it.

MC: Yes. You could interpret things away, but you couldn't exempt them. Exemptive authority is what made it so that eventually offering reform that happened in the early 2000s could work with things like free writing prospectuses. All the different ways that different communications were exempted later, we couldn't do any of that.

RC: How was the '33 Act different? It just was written that way?

MC: The assumption was that it should never be that you're going to make an offering to the public without the prophylactic of the sunshine of the disclosure. And you won't recall but the history on the '33 Act certainly—originally there was a big push to regulate on a substantive basis and say you can do this kind of offering or not, this company's good enough or not. And instead, Congress elected back in '33 to base it on a full and fair disclosure regime. And so I assume the reason there wasn't exemptive authority is they didn't want the government deciding people don't need information in these kinds of cases.

RC: Because they thought it would just run counter to the statute?

MC: Yes, I think so. I mean that's just a guess, but it makes sense to me in the setting of such a principles-based approach to regulation. But it made it extremely difficult in Corp Fin where we would be perceived as somewhat Luddites, that we weren't willing to let these cool things happen. But a lot of it was because the statute, you couldn't bend it that far.

Around that time Congress had us do a study—I think it was mandated by NSMIA, about how electronics impacted the securities laws and there was a big push on us to try to figure out a way to make it work better. So I'd say that was one of the more interesting kinds of subtexts to that time period. When I first got to the SEC it was a big deal to get a computer, and email was almost not used at all so typewriters were it. And this was in the early '90s so this was not that long ago, you know. I guess it is funny to think about, isn't it?

RC: It is funny to think about. And so from chief counsel, you moved to being the Associate Director of—is this correct—Small Business and International Corporate Finance?

MC: Yes. So this is a funny combination, isn't it? And the reason they were put together, we used to say, was because those were two groups of companies that both needed special help. That was the theme. I'm not sure that made any sense, because they're such different kinds of companies. And this was an interesting time then. On the international side, Linda's big program was to try to get companies to register and report with the SEC—foreign insurers—and comply with our requirements, rather than bending our requirements in ways that made us all very uncomfortable. So we had very much of a welcome mat to try to get foreign companies to come register with us.

And then the small business side, interestingly at the time, it was just after we had done the small business initiatives in the early nineties so I wasn't in charge of that office when they did those, and really at that time, I think more than anything, we were focused on fraud concerns in some of the pump and dump schemes and the like. So we were trying to be helpful to the small business, but we were also concerned about fraud. And the other big area in the small business office at the time was a sense that we needed to modernize the accredited investor definition in Reg D, which gets talked about all the time. And we worked on that for a significant period and didn't end up doing it. It's a very difficult thing to accomplish because of the small business interests in the definition staying as is.

We also, interestingly—fast-forward to today with JOBS Act—talked a lot about trying to get the ban on general solicitation lifted. And that was a topic that Linda, Elisse, Abbie and I would all go out and speak on, that it wasn't clear that you needed the ban in order to protect people if you could only sell to qualified buyers. So that was another interesting topic at the time.

But I did that job for about a year and a half, I think, and then the deputy director position opened up because Elisse went with Mary Schapiro to go to the CFTC. And as everyone will tell you, Elisse is an impossible act to follow; she was a beloved deputy and I was the new deputy and certainly did my best to fill her shoes. At that time there was only one deputy in the division, and I was Linda's deputy. I was her deputy for a couple years and then she left, and then Brian Lane came in to be the director and I was his deputy for two years and had a very busy time.

I think the thing I spent the most time on in the deputy director job was legislative matters. That's when NSMIA came along. I was the principal person in Corp Fin that worked on NSMIA, and that’s a big statute.

RC: Yeah. Can you tell me a little bit about that?

MC: The hardest part about NSMIA probably would be the issues around preemption of state Blue Sky Law. NSMIA preempts the states from Reg D 506 offerings and from regulating listed offerings and a variety of other things, and the Commission didn't take a position on whether or not the states should be preempted. It was a very sensitive topic. We were very careful not to weigh in. Basically our position was that as long as they weren't excluding the SEC from protecting investors, it was up to Congress and the states whether the states should be involved. But that was an extremely controversial topic.

It also had a bunch of other strange provisions that we had to work on. One of the concerns was that foreign issuers, or any issuers, engaging in activities with the press offshore wanted to have that be exempt from the Securities Act as not being an offer, and they mandated that we write a rule to do that. That was difficult. It's chock-full of provisions that related to Corp Fin, and we sort of one by one worked our way through them with Hill staff and then it eventually got enacted.

RC: It also included the exemptive power?

MC: Yes. That's when the exemptive authority came in. And that had followed on the heels—I was trying to remember when lit reform, the forward-looking statement of safe harbor was before that.

RC: That was before that.

MC: And I was also one of the people in Corp Fin who worked on that, so I worked on a lot of legislative matters throughout my time there and spent a lot of time up on the Hill, with difficult things to work on.

RC: Now, one of the issues I've been looking at, documents and articles and things like that, was this desire to simplify disclosure. It seemed like that took a lot of different forms. Is that something you worked on?

MC: Well, you know, that's a funny thing, to raise it that way. There were a lot of different projects going on with different ideas in mind. One idea was that we had way too many rules and that they resulted in too many burdens for companies and not necessarily useful disclosure for investors. That one idea spawned the task force on disclosure simplification, which was really a matter of going through all the rules and looking for things that weren't needed anymore. That was a discrete project that I worked on with others, but that was Brian Lane's, he ran that and he and I would divide up the work, and he worked on that more than I did. I would put in ideas such as: do we really need Reg whatever? And people would go look at it and say, "No one has actually ever done that so, yes, we could probably eliminate that reg." So there was that, and that resulted in a bunch of rule-makings that I don't think changed disclosure particularly but they did get rid of a bunch of rules that were not needed.

There was also Commissioner Wallman's project, what people call the Wallman Commission—I was the staff lawyer to that project when I was the deputy director, and I sat in on all of those meetings. The theme for that project was what they would refer to as “company registration”. The concept was that the integration of the '33 and '34 Act disclosure requirements that had happened in the early eighties should enable companies to go to market with a prospectus based on their '34 Act disclosures. Why do we need this transaction-by-transaction-based system on the '33 Act? Commissioner Wallman was exploring whether there was a way to get to, in essence, company registration based on where the law was at that time.

And lots of great ideas were floated and the ideas fed in to some extent into various rule-makings that came later, I'd say. The SEC has never gone to a full company registration model, but a lot of the ideas from that were certainly important to later efforts to more closely integrate how it works under the '33 Act and '34 Act. Particularly, fast-forwarding, if you look at offering reform from Alan Beller's time, what the companies that are known as WKSIs, the well-known seasoned issuers, they get file-and-go for offerings without pre-clearance just based on their '34 Act record. So that would be along the lines of what Commissioner Wallman was aiming towards. He wanted it to be that you could move forward quickly with an offering without having to worry that the SEC could slow you down.

RC: So there was seen that there was a need to accelerate capital formation, or to—

MC: I think reduce costs, accelerate capital formation. You know, it's funny, I mean things come and go between times when there's a regulatory bent and times when people feel like there's too many regulations. There I think it was really trying to rationalize regulation, and if you have one set of disclosures that the trading markets—which far dwarf the amount of money that could be lost by investors in the individual offerings—if the disclosure's good enough for the trading markets why do you need to stop and start all over again when you're doing an offering? It's a very good question. The '33 Act was written before the '34 Act. If it had been written the other way around -- if the '34 Act had come first -- you might have had a completely different system.

But the way the '33 Act works is religion for a lot of people. They think you need—the issuer has strict liability on the disclosure, and you need the rigor that comes with that—when the companies actually get money from people from public markets, they need to have a higher level of liability. That runs counter to trying to have everything go off the '34 Act with no speed bumps, because in order to protect the investors, issuers and underwriters in connection with offerings, particularly in light of the higher level of liability, there's this whole system built up around it of staff review and comfort letters from auditors and consents from accountants and all those things that didn't work in the setting of a seamless company registration model, which frustrated everybody pretty much.

NSMIA, I would say, was not disclosure-oriented and didn't really affect offerings. The bigger impact was Blue Sky, which had a big impact on Reg D offerings. The other piece that was sort of simplification-oriented at the time was plain English, which was a concern that, frankly, was there when I first got there with regard to limited partnership rollups. One of the first things we wanted to do there was make them rewrite rollup prospectuses to be readable by investors.

Overall, apart from rollups, the disclosure offerings had become quite clunky and difficult to read, and lawyers would write disclosure so that it was very precise with a lot of defined terms and multiple romanettes and parens, miserable summaries of agreements and things that no one could ever understand. The Plain English project was a funny project, because I think everybody felt like this is never going to happen, no one's ever going to change how they write. And eventually it did get better, and I think people do write better now and the documents are more readable. You still have to have the precision somewhere in the document. The analysts do actually want to read what the real thing is and they don't want your plain English summary of it; they want the real thing. So you have to have both. But I think that that was an initiative of Brian's that he took a lot of heat for but ended up being a big success at the end of the day. Incredibly difficult to get people to write differently though.

RC: It's because that's what they –

MC: All about liability. People were so worried that there would be a problem with anything they wrote in a summary fashion that wasn't precise. And we just challenged people to try hard. And I don't think people have been getting sued because their plain writing is misleading. So it took a while, but I think it's worked out well.

And then there are a lot of times when the desire to communicate because you need to leads you to write in plain English. Way fast-forwarding to today with, for example, trying to get a “yes” on your say-on-pay vote, people have gotten very good at writing more plainly about their compensation philosophies because they need people to understand what they're saying. And when you look at an IPO now, you'll see in the front of it a pretty readable version of what does this company do, what are its strengths, what's its market opportunity, in a pretty plain fashion without all the extreme technical jargon that goes with some of the technical industry. So I think it's a great development, and Brian gets a lot of credit for that.

RC: Now, were you there for the aircraft carrier?

MC: I was. Brian led that effort. I left before it was proposed, but it obviously was a long time in the making. And I'm sure you've heard talk about why it's called the aircraft carrier. We used to joke about how somebody would come up with an idea and we'd say, we'll just throw that on the aircraft carrier; it was hopeless. (Laughter) It was a really well-meant effort that was so overly complicated it never could have a hope.

RC: It just had too many pieces?

MC: It also tried to please too many people; it had give here, take away here, in somewhat inconsistent ways. I think people felt it would have been too complicated. It just took on too much. I worked on it, but again it was proposed after I left and then it wasn't adopted, as you know. The goals there were, again, a little bit like company registration. It was to free up communications. What had preceded it, I think not by much, were the changes for M&A transactions through Reg M and A, and those changes allowed for things like what eventually came in offering reform, which was freer communications outside of the regulated document. And I think the hope was that those ideas would also work in the aircraft carrier project. However, at the time the enforcement staff was incredibly nervous about bad things happening and wanted to make sure there was liability for those things, and the accountants were worried, everybody was worried, so I think when people looked at it they thought, “Well, there's some great steps forward but too many steps backward.” And so I think it became too hard to do. And that was shortly before I left.

RC: Are there other things from your first go-around at the SEC that you'd like to cover?

MC: I think the main point I made when I was leaving the first time was that the things I worked on and had fun doing had nothing to do with what I thought I would want to work on or have fun doing. The best part about working at the SEC is that you get to work with these people who feel passionately about investors and making the capital markets work, and so I never would have thought limited partnership rollups or how to deal with the Internet and changes in the way people communicate, none of those things ever would have occurred to me as things I would have wanted to work on or would have known to work on, and I had a great time doing them. So it was a fabulous time. I went for a two-year fellowship and I stayed seven and a half years, so that's a good long while.

RC: So what caused you to leave when you did?

MC: Well, I had been there seven and a half years, and my son was in private school by that point, and I was ready to go back to private practice. I liked practice in the ‘80s, and I needed to make a real living so it was time.

RC: And what brought you to WilmerHale?

MC: It was interesting. I had friends here who had been at the SEC, and I didn't want anyone to know I was considering leaving, so I did all the ethical walls you're supposed to do and I talked to Brandon Becker, who was at Wilmer, and asked him if he thought the firm would be interested, and he called me back in a few hours and said yes. And so I had just a few meetings. Brandon was here, and Marianne Smythe was here. It was Art Mathews' firm. It's a storied SEC-oriented firm who had never had a Corp Fin person.

RC: Really? Interesting.

MC: I was the very first Corp Fin hire. They had no idea what I did. It was hysterical. When I showed up, I think they had no idea what to do with me. And so I came here and built a practice around Corp Fin. They had not had anyone here from the division.

RC: So what sort of things did you build the practice around?

MC: My practice varied widely. When I first got here the IPO markets were still very, very busy, and the firm had a booming practice doing that kind of work, and so I helped with those right away. I think I was at the printer within a month of when I got here all by myself overnight wondering, what the heck? Luckily, it didn't go on for too long that way.

Bill McLucas and I worked together. He would be working on the enforcement side of a matter and I would help with the disclosure and governance side of it, so we did a lot of projects together and that was fun because we were friends. He joined about two months after I came, and we knew each other at the SEC, so it was fun to have a buddy. And Harry Weiss, who also had been an Associate Director in the Enforcement Division, was here and the three of us were close and we would work on matters together.

RC: Did you work on the Enron investigation?

MC: I did. Not on the investigation. I worked on helping the team think about what to conclude based on what they found. So, yes, I reviewed the report and did that with all the investigations if they had a Corp Fin bent. That was one fun thing about being at this firm was that I got to do that kind of work at the same time that I was building a corporate practice.

So then I built up a nice group of public companies that I counseled on things. I did some IPOs. I did a lot of debt capital markets work, and also did audit committee counseling. One of the things that happened pretty soon after I got here, there were two sort of big developments. One was Reg FD getting adopted, and then the other was the whole Sarbanes shebang. On Reg FD, which was adopted after a long period of disbelief, it was very challenging to teach companies how to operate in an environment that was totally different from what they were used to where they could no longer talk separately to analysts. There were a lot of hiccups at the beginning. Stepping back again on the fun, strange parts of my past, one of the things that I used to have to do at the SEC in the ‘90s was try to explain why selective disclosure was legal, because it was.

RC: And that wasn't insider trading?

MC: No, because there wasn’t insider trading, it was just disclosure. I was the poor schmo who had to talk to the press and explain why it was legal. It was not easy to explain why it was legal, and eventually Chairman Levitt came up with a way to make it illegal, which was clever and a good thing I think. At the time, people thought it was the end of the world as we know it but it worked out fine.

So I had that to do, and then after Sarbanes-Oxley was enacted, there was just a ton of work to get companies in compliance with all the new requirements because the requirements came out fast and furious, and everybody formed their disclosure committees and kind of regrouped. And by that time I had a lot of public company clients and so we were very, very busy and I did that for several years.

And then there was a period where I had several companies that were very active in the capital markets. I did a lot of capital markets work, a lot of offerings. I was here eleven years the first time, so I did a lot of different things. I was head of the corporate department. I led the corporate department integration on the Wilmer side in connection with the merger of Hale and Dorr and Wilmer. After the merger, there were a lot more people who wanted to ask me question from the Hale and Dorr side, which was fun. And around then is when financial crisis stuff started happening.

RC: Fall of 2008.

MC: Yeah.

RC: Bear Stearns was in the spring.

MC: Yeah. And before that the municipal auction rate markets closed, and that was when my husband was with Treasury and he was handling the municipal auction market issue and that market failed. So you could tell things were getting messy, capital markets got tricky, so I was extremely busy my last year and a half or so here dealing with financial crisis problems. The firm represented a lot of different companies from Wall Street who were dealing with those issues, and I was part of the team that helped figure out, you know, if we do it this way is that going to work under the '33 Act, '34 Act. I had to get a no-action letter for one financial services firm overnight on one thing in the middle of a transaction. There was a lot going on and we were all running flat out trying to keep things –

RC: These were new issues that were developing?

MC: Yes, nothing like any of that had ever happened before, and so it's hard to describe it from the practitioner's standpoint, in part because of client confidences. But, for example, you had to figure out if two financial services firms would merge, what happens to all the accounts, what happens with affiliates. There were so many questions that could come up and you had no time to think about it. You would get asked that question, and then you needed an answer in three hours. You didn't get to go back and think about it. So it helped to have a big, nimble group like we had here where you could all think about the issues quickly. And all the lawyers around the country who were working on these issues were all quite collaborative. People were just trying to keep things up and running. It was a terrifying time. And at the same time I had some really happy client things. I had clients that were busy in the capital markets, and so I was doing both.

RC: Crisis on one hand and –

MC: Yeah, and good stuff on the other. That was when one of my largest clients became a public company, so that was really happy. And at the same time, we had the liquidity problems with financial services firms happening. So it was a crazy time. And I was still head of the WilmerHale corporate department then, so it was very busy.

RC: Tell me about how you ended up back at the SEC.

MC: I never thought I'd go back. I had done that and I loved it, but I loved being here. And then after the election, and then John White announcing he was leaving, and then the President choosing Mary Schapiro for the job—Mary had been commissioner when I was there in the nineties, and Elisse Walter was a commissioner and a good friend of mine, and so I had a conversation with Elisse about whether I'd be interested in coming back, and then talked to Mary. And it was impossible to say that you didn't want to come back at that time. You know, David Becker was there, he was a dear friend of mine, and there were so many terrible things going on and the agency was under fire, and I cared deeply about the people and the place and so I couldn't not do it.

It seemed at the time it was a pretty disruptive, crazy thing to do. For example, they were getting ready to break ground on our home renovation, which we could then no longer afford. And we told them take your shovels and go home, because we can't afford it while she's in the government. So we put our lives on hold, and I did that. But it was the best thing, it was great.

RC: So coming back, I imagine there were things that you knew you were going to have to confront, and then also things that you hoped to be able to do. What were some –

MC: Yes. That's a good way to ask it. I had in mind a bunch of things I wanted to do, which I'll get to in a minute. But when I first sat down with Chairman Schapiro and we mapped things out, I said, “I think before we can do any of the fun or good stuff there's financial crisis things we have to take care of.” It wasn't like Sarbanes. In Sarbanes it was very focused on Corp Fin. The crisis that led to Sarbanes was all about bad financials and the like. What eventually led to Dodd-Frank were much more systemic problems with the financial regulatory system, and that was not as much my division, I'd say. That was more the banking regulators, some aspects of SEC regulation, and, within the SEC, more focused on TM than Corp Fin, although we had a major part in lots and lots of Dodd-Frank rule-making, which I'll mention eventually because sort of everything ended up in Dodd-Frank.

But the part we knew we needed to do in Corp Fin was three discrete things. We needed to address the lack of investor confidence in the accountability and information available to investors about corporate governance and leadership of companies. So there was a kind of “We don't trust management, we don't trust the information we're getting about management, management caused this problem”—that was the overall sense. Whether that's a fair criticism is a completely different question.

RC: But that's what people thought.

MC: That's what people thought. They thought there were a lot of people getting rich and not being accountable, and that there wasn't good enough oversight by directors. If there had been better oversight, these risks wouldn't have been taken, everything would have been better. If the directors were more accountable to shareholders, they would have been more careful. There was a lot of that thought, and so we knew we needed to do something to restore investor confidence that the system was essentially fair and that they were getting enough information about corporate governance and about their companies, the directors.

Two other areas that clearly needed to be addressed that were highlighted by the financial crisis were both the way asset-backed securities and mortgage-backed securities were offered, and the information about them. The way they would come off the shelf, each pool is new but they get the same speedy treatment that an offering coming off the shelf by a seasoned issuer gets. But each pool is new, and investors were screaming that they needed more time and more information about the particular assets and time to read it and think about it, and that became a very important project.

And then the other thing that we knew we needed to do a better job with was getting the disclosures of the large financial services companies to be extremely high-quality and timely reviewed. John White started, right before he left, to have the staff continuously review the disclosures of the first nine banks that got TARP money. We made it a permanent program, staffed up a big new office to take care of that, and added more large financial services firms to that office.

So those three things were the priorities: we knew we needed better bank disclosure, we needed to do something about ABS and MBS, and we needed to deal with the whole crisis of confidence about corporate governance.

We had those three things that we knew we needed to do before we could do anything else, so we then went about tackling those. Right before I got there, they had already proposed proxy access. About three weeks after I got there we proposed Proxy Disclosure Enhancements, which was a rulemaking to require targeted information about things like who oversees risk at the company, what are the qualifications of the directors, things like that. And then we also, while we were looking at things to do with proxy, put out the "Proxy Plumbing" Concept Release which was getting at questions about how do companies know who their holders are. There's a whole host of issues under proxy plumbing that you could go on and on about that we didn't actually end up getting to do but we were quite interested in.

And we also did some other things around proxy, like making eProxy work better, anything to do with getting the shareholder meeting to work better, and getting shareholders better information so they felt like they had what they needed to make reasonable voting decisions. So we did that right away, and then, as I mentioned, we changed the review program for the banks and set up a separate office for that, hired experts to work in it and I think that's worked great.

And then we put out a big rule proposal to change the disclosures for ABS and the ABS offerings system, which is a big deal. That proposal has a built-in speed bump where after you have a preliminary prospectus that has the actual pool of assets in it, then you have to wait five days.

RC: To give investors time to review.

MC: It gives investors time to read it, but it's still on shelf, so that convenience is still available to the ABS issuers. The proposal does away with ratings as a basis to get on shelf; as you know ratings were a huge matter in the financial crisis, the unreliability of ratings, particularly around ABS and MBS. And then we proposed to require individual asset-by-asset data in a tagged, computerized format for every asset in the pool. We proposed to require filing of a computer program called the "waterfall computer program" that would allow investors to see how the flow of funds would change depending on various conditions. Overall, it's sweeping, sweeping reform.

RC: Even that's a far cry from the technology that you had when you were in your first –

MC: Oh I know, I know, when I didn't even have a computer. I know. I had to learn what a waterfall computer program was, but I saw how it works and it is fascinating. So, anyway, that was a proposal for ABS.

So those were all things we had gotten out. We had the ABS proposal out, we had proxy access proposed, we were examining what to do with the proxy system generally, and then Congress passed Dodd-Frank, with what seemed a million deadlines and a whole different set of rules to do that completely changed what we had planned on doing.

RC: Do you mind if I circle back for a second? Did you put these things out thinking that they—because the three things, the asset-backed securities, the improved disclosure and the proxy measures and restoring confidence—is that because you thought they needed to be addressed before Congress could act?

MC: We didn't think we needed Congress to act. We thought we could do the things that were discrete to Corp Fin. We could do the things we needed. We believed we had authority to do proxy access. We could fix the proxy disclosure under our existing authority; we could fix the review program and the disclosures for banks under our existing review program; and we had plenty of authority under ABS rules. We could require different disclosure, different shelf offering procedures for ABS, so we had all that, and we thought those were the things we needed to do. The financial crisis wasn't primarily a Corp Fin crisis. There wasn't a concern that the overall disclosures were bad. That had been addressed through Sarbanes. The financial reporting was reliable, so Corp Fin was not the focus by any stretch, although investor confidence was, and so we were, again, trying to do the things to restore investor confidence.

And so we were ready to go forward and finalize rules for ABS and finalize the proxy access rules, and then we were going to start working on my projects. One was called the core disclosure project, where we were going to basically go in and start from scratch on what should be disclosed by companies through the '34 Act reporting model and how should it be disclosed. And I had a vision of, you'd open up EDGAR and you'd pull up, say, Microsoft's page and it would have the information that doesn't change, describing its business and things like that, and it would have their governance policies, and it would have all the things on the page, and then you could click through to find—it would have notices of any new filings they've got up, and you'd be able to navigate and look at the disclosures in a useful fashion instead of these big, giant documents that come quarterly that have become longer and longer and longer.

And going in and deciding whether we really needed a lot of the information that people were providing and instead could come up with more useful information. So we were going to basically start from scratch, and I had teams working on all the different parts so that we could move forward with that. So we were hoping to finish financial crisis stuff and move to that, sort of like how Alan got to finish Sarbanes and then do '33 Act reform. That would have been nice.

But then the Dodd-Frank Act got passed and, you know, I think my division had something like thirty rules we had to write. And they were just a crazy array. We got Congo Conflict Minerals. I probably spent close to 1,000 hours on Congo Conflict Minerals, an incredibly complicated subject matter to learn. Supply chain…

RC: It's so far from—

MC: Yes, very far from securities. And then one thing that was a big shift in Dodd-Frank was that over the years, both in the '90s and while I was there pre-Dodd-Frank, there were always pushes to use the disclosure requirements under the securities laws to serve social goals, and you can see why people would want to. You know, EDGAR's a national treasure. If you want somebody's information to be known to people you put it up on EDGAR, people find it. So that hadn't happened until Dodd-Frank, and it broke through in Dodd-Frank and there's three specific provisions in there, the Congo Conflict Minerals, Resource Extraction, which is the resource curse that people talk about, and then the Massey mine explosion had occurred right before Dodd-Frank and so there's a provision on mine safety in there.

And each of these things are wonderful things to want to address. Addressing them through the securities laws is not my preference, and it's very difficult from a policy perspective to get them through the Commission because they also have an element of social partisan—where are you on these issues—so they were very, very difficult. And so we got those to write, we had to do say-on-pay rules right away. It confirmed our authority to adopt proxy access, so we did finish that, but we were very far along towards finishing that anyway.

There were a whole lot of different rules on ABS that we ended up doing. There were a bunch of Reg D rules on the private offerings side, and credit ratings, on and on and on. We had this list in my office and we just slogged through it. So while I was there we proposed and/or adopted every rule that had a deadline that was a Corp Fin rule under Dodd-Frank. There are four left that haven't been proposed yet, and those are the rules for pay ratio, clawbacks, pay-for-performance, and hedging disclosure; those don't have deadlines and they continue to be of great interest to people.

So we pulled people out of disclosure operations and put them into rule-making teams so they could write Dodd-Frank rules, and when we were getting close to getting through them, the JOBS Act passed. (Laughter) So then we ended up having to start over, and that has a whole lot of rules for Corp Fin to write with deadlines, and it also had the IPO on-ramp, which was effective right away.

RC: Can you tell me a little bit about that?

MC: Yeah. So that was interesting. It's just like everything changes. Right after Dodd-Frank there was a lot of push to get those rules done, and then the climate changed dramatically around the mid-term elections towards “This is too much regulation, why are you writing these rules?” Well, because you told us. (Laughter) So that was going on, and at the same time we were looking for ways to try to reduce regulatory burdens for smaller reporting companies. We had formed an advisory committee that was looking at those issues. And there were also a lot of discussions sort of similar to those in the ‘90s about the difficulty and wisdom of trying to control communications around offerings in light of the explosion of communications technology.

There were several pieces of correspondence between Chairman Schapiro and Congressman Issa around offering modernization, changing the rules for communications around offerings, things like that, the quiet period, why do you have it. And we were working on those issues, and there were also a lot of people asking us to change the test for reporting, the 12g 500 holders threshold, what should it be. There was secondary trading happening in large, private companies and should those companies have to be public. There were a lot of questions going on at the time, and we were dealing with each of those. I testified in Congress a total of nine times while I was in the job. Many of them were on these topics as we were going along. There was a lot of interest in how can you reduce burdens, how can you make the rules work better. There was a lot of interest in crowdfunding. There was just a lot of interest in ways to help companies raise money more easily and/or have fewer regulatory burdens.

The Treasury Department set up a task force about looking at why there were not as many IPOs as there had been in the past, and it put out the IPO Task Force Report with suggestions for how to make IPOs easier to do and more likely to happen. And what happened was all at once, somebody introduced Title I of the JOBS Act, that was the IPO on-ramp piece, and all the bills that had been pending in Congress about things like the ban on general solicitation in private offerings, how many holders should make you have to be a public company, an exemption for crowdfunding, all that got combined into something that they named the Jumpstart Our Business Startups Act, JOBS Act, and it passed really fast.

And we had a lot of the projects already underway for pieces of it. The one thing we didn't have anything for was the immediate effectiveness of the IPO on-ramp. Essentially, that included things like they got to submit their filings confidentially for review. We didn't have a way to take in confidential filings at the time. Also, under that provision, you had to make your filing public twenty-one days before your road show, but they had a funny definition of road show that was inconsistent with test-the-waters provisions that they also let you do.

This was actually one of the more fun things. We were all exhausted by this point because we'd been running nonstop since I got there; this was April of 2012. We sat in my office for days on end and came up with what we termed frequently asked questions, even though we hadn't been asked them yet, and everyone knows that now, I've said that out public speaking, and trying to make the provisions of the JOBS Act work, because they had a lot of glitches. We didn't want to look obstructionist. And we were having fun because it was securities law, unlike some of the other stuff that we'd been doing. We got a lot of pragmatic advice out very quickly, and I think people were very grateful because it did make it work.

I think that part, the Title I, the IPO on-ramp worked fine and is working fine, and the rule-makings on the others are all ongoing. The general solicitation rule-making is the one that has been out as a proposal and hopefully can get adopted soon. And then they've still got to put out a proposal for crowdfunding and for what they call Reg A+, which is a $50 million exemption for small companies.

RC: Did you find that your experience doing legislative work in your first go-around with the SEC was helpful?

MC: Yes. Yes, definitely. It was a different tone in Congress when I was back the second time, but I knew how we gave technical assistance. Essentially, the staff doesn't take a position on whether legislation is good or bad. We do do things like explain to the Hill staff what would happen if they did this or that, but we wouldn't say don't do it. And then we would try to help get the words to work. We didn't get a chance to do much of that in these big bills that came along, because they went so fast. So the way Dodd-Frank came together, Congo conflict minerals and resource extraction, and mine safety were tacked on very much at the end, and they were in a section at the back called "Miscellaneous." And they're not exactly financial crisis-related.

But yes, working with Congress was a huge part of my job this time. The SEC has a wonderful legislative affairs office, extremely talented people who work really well with the Hill staff and my team in Corp Fin was also really good at it. The testifying in Congress was a whole new thing for me. Division directors generally don't do a lot of that, but this time around we all did. Mary had to testify I think more than forty times, or about forty, and for me nine is a lot. I mean, that was pretty surprising that I did that many. I think Khuzami might have done a couple more, but we were all up there either with her or on our own all the time. It was crazy, exciting, I mean it was very interesting, it was definitely very interesting.

RC: One of the things I wanted to ask a little more about was the proxy access, since working on legality in corporate governance is one of the things I'm just curious about, how that process worked, and then obviously what happens after the *Business Roundtable* –

MC: It's a fascinating topic, and interestingly one I did not know very much about when I went back because it's a topic of narrow applicability. Not that many people were interested in it or talking about it, except in the circles of those who cared deeply about proxy access.

I think the first thing to know about proxy access that most people don't understand, and I did not until I got there, was that it's not changing the rights to nominate directors. That's a matter of state law and still was under the rule we adopted. All proxy access is saying, if you meet certain criteria, your nominees that you're otherwise entitled to nominate under state law can be on the company's card. And so I used to say at speeches, "It's just a name on a card." That's all it is is a name on a card. And those who are so afraid of it would say, "You're belittling it, and it will result in dramatic change."

I personally don't think so. The thought by those who are big proponents of proxy access is that it's another, less expensive means for a shareholder to get their nominees considered for election. In reality, unless a shareholder spends money on a campaign for their nominees, the fact that they're on the card with a recommendation from the board to vote against them isn't likely to get them elected. And so it was interesting to me that there was such passion on either side of the issue, because for a shareholder it doesn't do you much good to get a name on a card if nobody votes for your person. And for companies, why is it so terrifying to have a name on a card when nobody's going to vote for these people?

The way the rule that we adopted was written, you were not allowed to use it if you had a change-in-control intent, and so you couldn't use it for a takeover. I think the real fear that companies had was that it would be used as a bargaining chip by somebody who wasn't necessarily interested in running a proxy contest but was more interested in extracting something else, and so they would threaten to put on a proxy access candidate, which would be very disruptive to management and the board, in exchange for something. So there was certainly a tremendous amount of passion around the topic.

As I said, when I got there it had been proposed, and I think people were surprised it was proposed in a way that didn't allow shareholders to decide they didn't want it at their company. You could decide you wanted a parallel, side-by-side regime or a more liberal regime, but you couldn't take it away. They proposed it with different levels of ownership, but basically, if you owned a large percentage for a certain amount of years you could put a certain number of candidates onto the card. And then it also included an amendment to the shareholder proposal rule, so that if you wanted to propose sort of a more liberal regime you could.

I worked countless hours on that rule-making. That one was going simultaneously with the Regulation AB rule-making. I carried around 1,000-page releases. They would give them to me whenever I was flying to Europe or the West Coast, because they knew they'd get long slogs of my reading time. And at the end of the day, the rule that the SEC adopted on proxy access included a requirement that you own three percent for three years and was, I think, and most people thought, pretty reasonable under the circumstances. And you couldn't opt out of it, but you could have a more liberal regime. And we made clear that we weren't creating nomination rights. You had to have a right to nominate under state law.

And that was challenged in the D.C. Circuit, and the court found the economic analysis to be inadequate. I don't want to get too much into that, but I can note that a lot of people think that satisfying the standard that the court set out there would be awfully challenging for any agency. People aren't sure what exactly could have satisfied it. I guess on the sort of good news/bad news front, the BRT and Chamber didn't challenge the amendment to the shareholder proposal rule, and the SEC decided not to do anything other than let that go into effect. And so what that means is now shareholders can propose proxy access. It had been prohibited to be proposed under the rules and Chairman Cox adopted the rules which said specifically you cannot have a shareholder proposal on proxy access. This eliminated that and specifically allowed for it.

So now, in the last couple seasons, shareholders have started proposing, and proxy access experts call that "private ordering," where essentially the shareholders in the companies will end up working together to decide what the proxy access rules will be at each company. I've heard from many that they wish they had our mandatory rule, because it would be less annoying to deal with than all these shareholder proposals on the topic. And I don't know if the SEC will ever go back and do it again and make a mandatory rule. I mean, there's so much else on the plate that it's hard to say. But that was a frustrating experience because we did, I think, a very responsible job coming up with a rule that was not that burdensome. But the good news is, investors got left with a relatively good rule and I think the issuers are not suffering particularly as a consequence, so it landed okay.

RC: One of the things that you mentioned was improving disclosure regarding director qualifications and things like that. Can you tell me a little more about that?

MC: We did that, and I think it's useful disclosure. It's interesting, now that I'm actually reading it, I'm very much enjoying seeing what companies have done with it. This is a more discrete topic but I think one that was a nice little fix—under the old rules you had to put basically the director's bio for five years worth of information and it was very much, you know, it's this person, he's CEO of this company and he's been in that job for these many years. And what Chairman Schapiro very much wanted—this was something she talked about a lot—was for shareholders to understand why they should vote for that person. Like, why is that person a director, what qualifies them?

And so the disclosure is a really basic concept, it's kind of a like a campaign. You know, what qualifications of that person make them well-suited for the director position? And companies provide really interesting information about why their directors are in the positions they're in.

The first year of the rule, I think, was very awkward because there were some directors where it was hard to explain. You know, athletes, movie stars, it was a funny season where people wrote things about some of the people that they had on their boards. And I think over time it probably evolved for some board members, so that you had somebody that you could explain why you would have them on your board. For some companies, obviously, having actors or movie stars or athletes makes a lot of sense. I don't know this to be the case, but if you're a sneaker maker and you've got people that wear your shoes, that certainly could make sense. But for some companies it was really hard to explain, so I think that was a really good, discrete change. It drove people crazy at the beginning, and I understand directors were wanting to make sure their explanation was as good as the other directors', but I think it turned out fine.

RC: There was also a movement to add things like risk assessment and CEO succession?

MC: Yes. As a disclosure requirement we added what's the board's role in risk oversight, and so that's now included in proxy statements. And I think it arguably is a little boilerplate-y now, but what it did do was cause boards to go back and understand exactly how they were overseeing risk and which parts of the board do which parts. None of these were Dodd-Frank rules. These were just the rules we did at the beginning. One of the requirements was to disclose whether or not your compensation programs exposed the company to material risk. The idea there being to require the company to figure out if you have, for example, compensation that may cause a crazy derivatives trader to kill the company with dangerous bets. The companies had to go and look at all of their compensation programs — and it didn't just relate to executives, it was throughout the whole company. So in order to be able to say, no, we don't have that, we don't have programs that do that, they had to go look at all their compensation programs and see what kind of risk they might incent people to undertake. The disclosure itself is not all that substantial. It's like a sentence or two: our programs don't expose us to material risk. But the exercise the companies had to go through actually caused them to understand better how their comp programs worked, and so I think that was another very good reform.

RC: One of the other things I want to touch on is the say-on-pay rules.

MC: So the say-on-pay was something that already was in place in London. People in Europe thought it was a pretty customary thing, and it's a non-binding vote. And it had been in TARP already for anybody who'd gotten TARP money. Before I got there, that was already in place. So they applied that in Dodd-Frank across the board, and without a rule-making required so it went into effect right away.

What we did in Corp Fin was we looked at it and tried to figure out what did companies need in the way of rules to make it work for the first season. For example, if we hadn't changed the rules every single company would have had to file a preliminary proxy, which would have been a disaster. So we recommended to the Commission that they move forward very quickly with a bunch of clarifying rules and procedural rules to make it work, and that included also that they vote on how often they want to vote on say-on-pay.

One of the things that happened that was funny at the time was that the people who put together the proxy cards said that you couldn't have the number of choices that was needed. The system wouldn't work. And we said make it work and they did. Amazingly, they made it work, that's Broadridge, and they were gracious about it after an initial few hiccups when they said they didn't think they could. They came around to making it work.

And the say-on-pay votes have been, I think, tough on companies, tough on comp committees. They have resulted in much improved disclosure in the filings about the comp programs, because if you're trying to get people to vote for your comp programs, you need to better explain them. And I think that's a good thing. It's too bad they're every year, I think, which is what most investors ended up choosing, so that the companies are doing them every year, because there's so much time spent year after year after year on that issue. That issue is certainly important to a portion of the investor community. There's a lot of time that could be spent on other issues. So it is what it is. Maybe over time people will decide they want to go to every three years. I doubt it, but perhaps. That could be an improvement so that this isn't such a major part of what companies have to deal with day in and day out. That is an awful lot of time to spend on that.

RC: I'm looking over my list. I think we've covered most of what –

MC: It's a lot of stuff, isn't it? (Laughter)

RC: Yeah. Were there other things that you had hoped to get to? You talked about the core disclosure. Were there other things that you would have hoped to get to?

MC: Yeah. One big thing I wanted to do was what we called Offering Reform 2.0, which was to take a lot of the stuff from the 2005, 2006 offering reform and make it available to more companies, so free writing prospectuses and File and Go and things like that, loosening up the quiet period rules. We wanted to make that more available across the board. It all worked great, bad things did not happen, and so it makes perfect sense to extend that stuff to more companies. A lot of companies feel like they're in this black hole between the emerging growth companies that got breaks in the JOBS Act and the large WKSIs that got breaks in offering reform, and what about all those companies in the middle who are stuck with sort of the hardest rules. I think there's a lot of low-hanging fruit, easy-to-fix things that could be extended there and should be.

And the other thing that really needs to get done is the asset-backed securities stuff needs to get finalized. It's so hard that it's hard to get anybody to pick it up. It's a discrete area, the releases are long and hard, but there's real need for reform and so getting to do the stuff that wasn't the Dodd-Frank—Dodd-Frank imposed a bunch of ABS requirements that we got done. There's risk retention which has to be done with all the agencies, but that'll take still, I'm sure, some time. But all the ABS disclosure reforms are not Dodd-Frank and they just need to get done, as do the ABS offering reforms. And somebody's going to have to decide they want to do them, and I hope that Chair White will find some time to do those because they're important. It's a discrete part of the market but it has a huge impact on the economy, as you can see from what happened when it didn't go well. That was a large part of the financial crisis, was ABS and MBS blowing up, so it would be nice if they could finish those reforms.

RC: Are there other things you'd like to cover?

MC: From the SEC time, I think the most important things that don't come across from anything I've said so far is just what a wonderful agency it is, and the quality of the staff and the care and devotion that they bring to their job is remarkable.

RC: Especially in a very trying era.

MC: Very trying times. And the part that amazes me is, you know, the directors come and go and the chairmen come and go, and there's a level of staff with the deputies and below, who stay and keep at it and get enthusiastic with each new group and each new crisis and each new thing that has to be done. I'm just in awe of them, because I don't know how in the world they get fired up and go do it again. And they work incredible hours, and are constantly criticized by some or another group. I think they don't get enough credit. The directors get treated very special, and it was nice to be treated special, but, you know, I'm just a lawyer back now in practice and I know that full well. They're the ones that should be treated special, and they don't get enough of that. So I tried very hard to make them feel appreciated, and I think more of that would be good. The public is much luckier than they realize about the devotion of these people. They're amazing.

RC: Are there people who played key roles in your second round that—

MC: Oh, there's so much risk in that. At my going-away party, somebody came up to me afterwards and said that I listed more people than they had ever heard, which they said was so much my personality because I care so deeply. I'll say my deputies and my senior special counsels were absolutely invaluable to me and they were amazing, and I brought two of my senior special counsels, Lily Brown and Jennifer Zepralka, here with me to Wilmer and they're partners here in the corporate group. And Tamara Brightwell, who's still there, was another one of mine. She now works for Mary Jo [White]. And then Lona [Nallengara], one of my deputies, is now Mary Jo's chief of staff, and then Paula Dubberly and Shelley Parratt are deputies in the division now working for Keith Higgins, and they're all wonderful people. They were my closest advisors. But there were so many wonderful people.

The other thing that was wonderful on this go-round, I think much more so than I had seen in the past, was all of the division directors, we really rallied and worked together. We were a close-knit group. We liked each other a great deal. And it was a terrible time. I mean, when we got there people wanted to abolish the agency. That was the talk. And we had meetings of the division directors and David Becker the general counsel that were like secret meetings where we would try to plot out what to do that week to try to keep things up and running and how to help Mary. It was a very, very hard time, very exciting but very hard. And I don't think the public has any idea how hard all these people work, and how everyone tries to do things that are reasonable. That's very much the atmosphere there. It's nice to get an opportunity to talk about it.

RC: Anything else you'd like to cover?

MC: I'm happy to be back at WilmerHale. It's a fantastic law firm that is a really good place for former SEC people to come, and they've been gracious. And I look forward to working with the Historical Society and continuing my relationship with all my friends at the SEC, including my husband, John Cross, who works there. (Laughter)

RC: Well, thank you very much.

[End of Interview]